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No. 10-817

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

Anne Boston Parish,

Petitioner,

v.

Commonwealth of Virginia,

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court of Virginia

PETITION FOR REHEARING

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Pro se

March 15th, 2011

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INTRODUCTION

The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Due Process Clause of the Fourteenth Amendment, states the same eleven words to describe the legal obligation of all states. It was Thomas Jefferson's fervent belief that anything is possible. **It is possible and vital this conviction is reversed, dismissed or remanded to the lower Court.**

The Virginia Supreme Court erred when it ruled in finding the evidence sufficient, as a matter of law, to support Petitioner's conviction. The opinion of the Court of Appeals of Virginia was presumed "to be correct and would be reversed only upon a showing that it is plainly wrong or without evidence to support it."

A motion for a new trial based on after-discovered evidence "is a matter submitted to the sound discretion of the lower Court and will be granted only under unusual circumstances after particular care and caution has been given to the evidence presented." This period is referred to as the time for which the case is "in the breast of the court", and during this time the court has complete discretion to suspend, vacate, or amend its judgment or decree. **Va. Sup. Ct. R. 3A: 15; 1:1**: Motion to Strike or to Set Aside Verdict; Judgment of Acquittal or New Trial must satisfy a four prong after-discovered test to suspend, vacate, or amend its judgment or decree. **This Petition of Rehearing satisfies the four prong after-discovered test (that fell within the legal obligation of the lower Court) to grant a new trial due to its unusual circumstances.**

The United States Supreme Court has an obligation to reverse, dismiss or remand to the lower Court.

1. **The Evidence was discovered after the trial**:
   A. Defense counsel directed key witness, Mr. Akbar, not to come to Court. Petitioner was told **after the trial**, (Appendix E).
   B. Mr. Roger Owens the USPS Manager, called Petitioner. Miss Roth was modifying the charges; **after the trial**, (July 3, 2009).
   C. Defense counsel did not assist Petitioner within the "21 day rule" of judgment (June 22, 2009) **Va. Sup. Ct. R. 3A:15; 1:1** requesting a motion for a new trial that was within the twenty-one-days-from-conviction limitation on presentation of newly discovered evidence of innocence, **after the trial**.
   D. An electronic mail from Mr. Greenspun states his withdrawal from the case, within the 21 days from judgment was sent to Petitioner **after the trial**.

pdg@mail.greenspunlaw.com

To Anne Parish, James Abrenio

Ed 7/08/09 1:58

Anne:

Given the letter to Judge Brown, I will not take any other actions on your behalf. I have never received information that Ms. Roth wants to drop the charge since the trial result. We knew, as did you, that she was not pushing the charges vigorously, but the prosecutor insisted on proceeding despite Ms. Roth's attitude. That was his decision.

(Abbreviated)
Peter [s]

2. **The Evidence could not have been discovered, through the exercise of due diligence, prior to the trial**:
   A. Defense counsel did not display due diligence in ethical and moral, conduct or competence set forth by the American Bar Association within the 21 days to defend Petitioner **after the trial**.
   B. Defense counsel's intentional wrong, and refusal to defend Petitioner, was viewed as bad faith and **grounds for reversing a conviction on appeal after the trial**.
3. **The Evidence is not merely cumulative, corroborative, or collateral**:
   A. Defense counsel refused to defend the Petitioner, when advised that Miss Roth had come forward to modify her charge is grounds for reversing a conviction on appeal **after the trial**.
   B. Defense Counsel, a scholar of the law, withheld legal procedural or protocol/ technicality for a Judgment Motion. A letter written within the 21 days of judgment needed, to be in front of a Judge in Court, not merely written to a Judge **after the trial** (Appendix H).
4. **The evidence is material to the extent that it is likely to produce different results from a new trial**:
   A. The Virginia Courts erred, with prejudice, **not** to enforce the Commonwealth rule **Va. Sup. Ct. R. 3A:15; 1:1**.
   B. The dismal of **Va. Sup. Ct. R. 3A:15; 1.1** is an improvident exercise of misconduct; **an error of law and grounds for reversing a decision on appeal**. The

> right to a new trial was not granted as due process would allow when the Honorable Judge Brown **denied a new trial** dismissing a letter dated July 6th, 2009 (Appendix H) in accordance to **Va. Sup. Ct. R. 3A: 15** was within the 21 days of judgment **and met all criteria for granting a motion for a new trial**.

If this conviction is affirmed, it will set a precedent that any two persons can make up a tale and for any reason have an innocent person wrongfully arrested. The Commonwealth of Virginia has opened the "flood gates" for innocent people to be wrongfully arrested and maliciously prosecuted. With lack of any fact and without any evidence a person may now be wrongfully arrested and convicted solely on the "unfounded information" of two people making up a tale out of prejudice, hate or mean spirited and nothing more.

LAW AND ARGUMENT

Pursuant to Rule 44, a petition for rehearing is limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presents **(Rule 44)**. On February 22, 2011, this Court issued an Order denying the Petitioner, Anne Boston Parish, ("Petitioner"), Petition for a Writ of Certiorari. The Petitioner now timely seeks this Petition for Rehearing.

The Petitioner's Petition for A Writ of Certiorari was mailed to this Court on December 17, 2010. On September 24, 2010 the Supreme Court of Virginia issued their decision to deny Petitioner a rehearing to set aside judgment rendered on July 22, 2010. The Commonwealth of Virginia did not follow its governance, yet their prosecutorial misconduct and demonstrated overt

constitutional prejudice that further gives confidence in the erosion of the Virginia Code of Judicial Conduct.

Under the standards, set forth by the American Bar Association, the United States Constitution, and Bill of Rights the insubordination of the lower Court evokes contempt. **This case is an egregious departure from constitutional law and grounds for reversal, dismissal or remanded to the lower Court**. The Virginia Supreme Court's denial of Petitioner's rehearing is a failure to consider the facts and law relating to a particular matter; an arbitrary or unreasonable departure from constitutional precedents and settled judicial custom. The Commonwealth's judicial performance was paradoxical and highly arrogant with counsel's conduct not functioning as 'counsel' **guaranteed** by the Sixth Amendment.

The lower Court of Virginia dismissal of the "Fundamental of Fairness" standards shall, by virtue of this United States Constitution, have original jurisdiction in cases of Writ of Certiorari, and shall compel a lower court to perform mandatory or purely ministerial duties correctly. The question of jurisdiction is dependent upon the decision of a constitutional question in the lower court. Jurisdiction may be conferred upon the United States Supreme Court by virtue of the constitutional that the constitutionality of the law was called in question and decided in the lower Court, ***Hulvey v. Roberts*** **106 Va. 189. 55 S.E. 585 (1906)**.

In a retrospective analyzes of ineffective assistance of counsel, **after the trial** and within the "21 days of judgment" counsel's conduct so undermined the functioning of the adversary process that this trial could not be relied upon as having produced a just result. ***Strickland v. Washington,*** **466 U.S. 668, 666 (1984)**. The ineffective assistance of counsel was

pretentious and a violation of Petitioner's constitutional Sixth Amendment. Mr. Greenspun's lack of assistance for a new trial calls into question his obligation to perform at a level of competence and consequently compromised the outcome. Mr. Greenspun's failure to defend Petitioner was fundamentally wrong. He ostentatiously sent an electronic mail to Petitioner, stating, "He would not assist Petitioner within the critical 21 days of judgment to secure a new trial." In ***Cronic***, the Court described this type of a situation an unreasonable departure from constitutional law from which prejudice is presumed. When counsel does not assist the accused, at a critical stage of the proceeding, or when counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, courts will presume prejudice ***U.S. v. Cronic*, 466 U.S. at 659 & n.25. (1983)**.

There are numerous cases that will be cited to support the departure of constitutional law inherent in this case. It is equally significant to note that the Virginia Court of Appeals erred when liberally dismissing a letter to Judge Brown dated July 6, 2009, (Appendix H). This error went to the heart of the case and was **within** the draconian twenty-one days-from-conviction limitation on presentation of newly discovered evidence of innocence **Va. Sup. Ct. R. 3A:15** that was a violation of the Petitioner's constitutional rights for a new trial.

The Prosecutor's actions in ***Hayes v. Brown*** illustrates how a prosecutor's unethical conduct resulted in a tainted and unjust trial. ***Hayes v. Brown*, 399 F.3rd 972,988 (9th Cir. 2005)**. Further in ***Alcorta v. Texas*, 355 U.S, 28, 31 (1957)** the United States Supreme Court announced that prosecutors have an independent duty to correct information they know to be false ***Alcorta v. Texas*, 355 U.S. 28, 31 (1957)**.

Subsequently, the United States Supreme Court established that a prosecutor's failure to correct false testimony was unconstitutional ***Alcorta v. Texas*, 355 U.S. 28, 31 (1957)**. This departure from constitutional law is not only significant but salient, and corroborates Mr. Greenspun's and the Commonwealth's pompous departure from reporting new evidence, **after the trial and within the 21 days from Judgment**, as acts so unconstitutional it led to an unfavorable outcome and conviction for this Petitioner, an innocent person. The United States Supreme Court in an effort to determine whether trial testimony was correct first granted relief in ***Mooney v. Holohan***, for the use of false testimony by a prosecutor to seek a conviction ***Mooney v. Holohan*, 294 U.S. 103, 115 (1935)**. In ***Mooney v. Holohan***, it was alleged the prosecutor withheld evidence that would have exposed perjury **Id. at 110**. The United States Supreme Court held the State knowing use of false testimony was "inconsistent with the rudimentary demands of justice," and hence, unconstitutional **Id. at 112**.

Seven years later, in ***Pyle v. Kansas*, 317 U.S. 213, 215-216 (1942)** the United States Supreme Court held that suppression of evidence favorable to the accused was sufficient to create constitutional error. The United States Supreme Court reversed, holding that these allegations indicated that defendant's constitutional rights had been violated **Id at 216**.

On appeal, the lower Court and Mr. Greenspun's decision not to seek a continuance was unconstitutional. Similarly to ***Pyle v. Kansas***, Mr. Akbar was the one person who could exonerate the Petitioner. (Appendix E). Mr. Greenspun had a moral and ethical obligation to uphold the Sixth Amendment of the United States Constitution to defend Petitioner. It was Mr. Greenspun's responsibility to ensure the key witness be present in

court or request a continuance of trial. Neither of these two options was executed. **When this was brought to the Courts attention, after the trial, it was the lower Court obligation to grant a new trial.**

CONCLUSION

The Supreme Court of Virginia's published opinion affects every citizen in the United States. This conviction will sanction and gives great preeminence to State and Federal government agencies to convict an innocent person without evidence or fact. This wrongful conviction will promote and tolerate the proliferation of bias, prejudice, ignorance and hate. **To ignore this wrongful conviction is to affirm and establish a precedent that is a violation of the Petitioner's constitutional rights of the United States Constitution.**

Mr. Greenspun's electronic message **affirms the Commonwealth's desire to prosecute the Petitioner**. The arrogance and lack of discipline that is inherent within the Commonwealth of Virginia's failed justice system is unconstitutional. **The lower Court just got it wrong.**

- There is or never was any evidence to substantiate the conviction more so this case began with a heinous made up offense and pitted an unpopular minority female, assisted by an inadequate defense, against a determined prosecutor zealously seeking a conviction.
- In this "low profile" case, the pressure to convict involved standard cases to which no one pays close attention. Conduct explained in this way may include disregard for due process safeguards, to overt pressure on witnesses to give evidence that will support the conviction of the selected suspect, to

falsification of evidence, all in the name of securing a conviction of someone the police have decided is guilty.

- A marginalized female who can be made to bear public fear, embarrassment, humiliation and the loathing is the necessary element of a wrongful conviction. "The ends may justify the means" rests on the assumption that the police have found, and the state is prosecuting, the right person.
- The challenge is to be morally ethical and intellectually honest during an investigation, fair during trial, and above all, humble enough to admit error. Anyone can make a mistake; the evil lies in refusing to admit it.
- The role of the police to generate the evidence is only half of the equation. The other half rests on the role of the police and their high status within the administration of justice.

Without the intervention of the United States Supreme Court, a ruling to affirm this case will bless lawyers, judges and courtrooms akin to cite this particular case that will sanction any two persons, without an iota of evidence or fact to accuse one person of a false charge, to be wrongfully arrested and maliciously prosecuted. It is incumbent upon all those who evaluate the causation of this wrongful conviction to consider the internal prejudice within the parameters of this case.

In ***Pyle v. Kansas*, 317 U.S. 213, 215-216 (1942)** the United States Supreme Court held that suppression of evidence favorable to the accused was sufficient to create constitutional error. Any misuse of public authority threatens the equilibrium of a system resting so fundamentally on the consent of the governed, but the threat is most acute when the misconduct injuries

a citizen directly-especially if it denies the Petitioner a constitutionally protected right. This conviction illuminates the importance of the United States Supreme Court Justices to grant instant Petition for Writ of Certiorari. **It is possible and vital this conviction is reversed, dismissed or remanded to the lower Court.**

For the reasons stated above, the Petitioner respectfully requests that this United States Supreme Court Grant the Petition for Rehearing and grant Petitioner its previously submitted Petition for Writ of Certiorari.

Respectfully submitted,

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CERTIFICATION UNDER RULE 44

Anne Boston Parish certifies that pursuant to Rule 44, the grounds for this Petition for Rehearing are restricted to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented in the Petition for Writ of Certiorari and that this Petition for Rehearing is presented in good faith and not for delay.

Respectfully submitted,

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